would not discuss this issue any further, since the state requirements exist completely separate from federal requirements and are not really relevant to whether our Plan meets existing federal safeguards. However, we do want to correct an error in the record. Sprint states that state regulations do not require the reporting of any transaction between a telephone company and its subsidiaries.[61] California Rulemaking No. 92-08-008 requires that "each utility that has any affiliated entities (as defined in Section I-G) must annually file a report with the Commission entitled "Annual Report on Significant Utility-Affiliate Transactions...."[62] Affiliate includes subsidiaries such as PBMS whose revenues and expenses are not subject to regulation by the CPUC. Therefore, transactions between PB and NB must be reported.[63]

7. Cox's Statements Ignore Elements Of Our Plan And Should Be Disregarded By The Commission.

Cox's comments on the accounting issues are so full of inaccuracies and misleading statements that we feel compelled to respond. Cox ignores our statement that we will treat PCS as nonregulated for federal accounting purposes and comply with the requirements of our CAM. Many of Cox's comments seem premised on the belief that since PCS is a common carrier service, Part 64 and the associated affiliate transaction rules in Part 32 will not be helpful in preventing cross subsidy. For example:

> Proper allocation of costs of a nonregulated activity such as the provision of customer premises equipment, normally is easily determined and can be reviewed by inspection of the relevant sections of a LEC's cost allocation manual. Review is inadequate, however, for determining whether the costs associated with a common carrier service should be placed on the regulated telephone side or on the unregulated activity side of the ledger.[64]

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[61] Sprint, pp. 20-21.

[62] Order Instituting Rulemaking on the Commission's Own Motion to Adopt Reporting Requirements for Electric, Gas and Telephone Utilities Regarding Their Affiliate Transactions, Rulemaking No. 92-08-008, 1992 Cal. PUC Lexis 576, pp. 46-48.

[63] Decision No. 93-02-019, Rulemaking No. 92-08-008, 1993 Cal. PUC Lexis 80, p. 7.

[64] Cox, p. 25.

Cox conveniently ignores the fact that we have said that, for federal accounting purposes, we are treating PCS as a nonregulated service. Cox continues to ignore it when they state that "PacTel has offered no allocation scheme for Commission consideration."[65] We have offered a very complete and proven scheme for treatment of PCS as a nonregulated activity with adherence to the comprehensive federal accounting safeguards previously described.

Cox also states that "because the rules require the allocation of costs only between common carrier and non-common carrier services using a carrier's forecast of relative use, they currently provide no mechanism for assuring that costs are in fact properly allocated."[66] This statement again shows little familiarity with the cost accounting rules. In the Part 64 forecast, carriers must do a true-up and pay interest on costs that are not true to the forecast.[67]

Cox goes on to state: "Part 64 rules give LECs wide discretion to allocate costs between their regulated and nonregulated entities because the three-year forward looking forecast of allocation of central office equipment and outside plant investment between regulated and nonregulated activities is entirely controlled by the subjective judgment of self-interested LEC management."[68] Again, Cox ignores the facts that (1) costs are allocated pursuant to our CAM which was approved by the Commission, and (2) our compliance is audited on a yearly basis. This system hardly constitutes wide discretion. Additionally the three-year forward looking forecast is used solely to allocate costs of network investment used jointly for integrated regulated and nonregulated activities, not between entities in affiliate transactions. Again, Cox confuses the Part 64 cost allocation rules with the affiliate transaction rules.

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65 Id.

66 Id. at p. 24.

67 In the Matter of Separation of Costs of Regulated Telephone Service from the Costs of Nonregulated Activities, CC Docket No. 86-111, Report and Order, 2 FCC Rcd 1298 (1987), paras. 170-171, Order on Reconsideration, 3 FCC Rcd 6701 (1988), paras. 64-68.

68 Cox, pp. 25-26.

Cox also claims that "PacTel has the incentive and apparent ability to allocate costs to regulated monopoly services to forestall any attempt by regulators to lower these rates."[69] It is unclear how PB can allocate costs to monopoly services, since PCS will be provided in a separate subsidiary.

Cox makes another peculiar claim that the "lack of rules on the federal level may well prevent any state review of PacTel's costs. Without meaningful rules from the Commission requiring PacTel to disclose its PCS cost information, regulators in California and Nevada will have no way to protect their citizens."[70] This statement is ridiculous. The regulators in California and Nevada have the authority to collect information they consider to be necessary to carry out their responsibilities, irrespective of what the federal requirements are.

Cox seems to be attempting to obtain information on PCS costs: it requests that LECs fully disclose all costs and revenues on a line-item basis.[71] But the FCC has full access to the annual accounting audits. That information is sufficient to ensure compliance with the cost allocation rules. There is certainly no reason why we should be required to publicly disclose the cost of a competitive service. The only purpose that would serve would be to give our competitors information of competitive value to them (which is what we suspect Cox desires). The Commission should summarily reject such proposals.

Cox also suggests that the fact that our license is held by PTMS and the PCS service is provided by PBMS creates an opportunity "to camouflage their true PCS costs."[72] MCI makes a similar assertion.[73] The true costs of PCS being offered by entities separate from PB and NB are irrelevant to the issue of cross subsidy. With the exception of some costs for services

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[69] Id. at 27.

[70] Id.

[71] Cox, pp. 28-29.

[72] Id. at p. 29.

[73] MCI, pp. 2-3.

provided by affiliates, PCS costs are already separate from other regulated costs because PCS service is provided by a separate subsidiary. Moreover, all transactions between PB and PTMS and between PB and PBMS will be pursuant to the affiliate transaction guidelines. That is sufficient to prevent the limited possibility of cross subsidization.

Finally, Cox argues that price cap regulation has not reduced the ability of LECs to cross subsidize because they can "'game the system' on a yearly basis by moving from high price caps with no sharing to lower price caps with sharing as LEC anticipated revenues and future sharing obligations dictate."[74] In support, Cox attaches an analysis related to video dialtone costs.

This argument makes little sense with respect to PCS costs, which are nonregulated and already removed from the price cap calculation by virtue of the fact that a separate subsidiary provides PCS service. Moreover, Cox's argument is far-fetched. It assumes that the sharing option would be chosen based on the benefit to a particular service. The decision to share is based on a variety of factors. If a LEC chooses sharing for one reason, it must forego all of the advantages it sought under non-sharing. It is unlikely this could be justified to support a shift every year. Despite Cox's claim, a price caps structure without sharing does eliminate any ability to cross subsidize since it provides no way to recover additional costs through higher prices of regulated services.

8. The Bureau Has The Requisite Authority To Rule On Our Plan.

Cox raises the issue of whether the Bureau "has the requisite authority to rule on the adequacy of the Plan's safeguards given the <u>novel</u> question of Commission policy it presents."[75] Cox does not explain just what it believes to be novel, but it seems to be alluding to uncertainty regarding the federal accounting treatment of PCS. However, there is no uncertainty. The Commission has stated that services never subject to rate regulation are considered to be

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[74] Cox, p. 26.

[75] Cox, p. 17, n.45 (emphasis added).

nonregulated for federal accounting purposes.[76] Our Plan treats them as such. In reviewing our Plan, the Bureau is not required to make any "novel" determinations. The accounting rules are detailed and well-established. A determination of whether our Plan meets these rules is completely within the Bureau's authority.

9. The NARUC Audit Did Not Find That We Engaged "In Extensive Cross Subsidization."

Cox alleges that the National Association of Regulatory Utility Commissioners ("NARUC") found that we engaged in "extensive cross subsidization despite the presence of accounting 'safeguards.'"[77] Cox again misleads the Commission.

NARUC requested that the various state regulatory Commissions conduct audits of affiliate transactions at the RBOCs. These audits were handled differently in the different regions. In California, the audit was conducted by a team of "auditors" from the Division of Ratepayer Advocates (DRA). It is important to point out that the DRA is an advocacy group, established to represent utility ratepayers in proceedings before the Commission. They are not impartial "auditors."

PB was given an opportunity to respond to the Audit (which was 177 pages long, not counting the introductory pages and lengthy Appendices), but our Response was limited to 30 pages. In our Response, we pointed out numerous errors and misinterpretations of data in the Audit, but (because of the page limits) we were not able to correct every error. We also noted that the Audit made many broad accusations of cross subsidization and failure to follow rules, but made very few specific accusations that we had violated a particular rule in a particular instance. In fact, the auditors criticized us in a few cases for following the affiliate transaction rules mandated by the CPUC.

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[76] In the Matter of Eligibility for Specialized Mobile Radio Services and Radio Services in the 220-222 MHz and Mobile Band and Use of Dispatch Communications, GEN Docket No. 94-90, Notice of Proposed Rulemaking 9 FCC Rcd 4405, para. 20 n.64 (1994).

[77] Cox, p. 31.

Most importantly, the Audit ignores the new system of ratemaking that began in California on January 1, 1990. This new system, called the "New Regulatory Framework" or NRF, set PB rates based on its costs as of 1989. An important feature of NRF is its price cap mechanism, which separates the prices PB are allowed to charge for services from the costs it incurs to produce those services. Under NRF, PB's rates are adjusted annually based on a formula reflecting changes in the Gross Domestic Product Price Index and a CPUC-established productivity factor. Although this formula adjusts PB's prices, these adjustments do <u>not</u> reflect changes in actual costs. PB cannot seek a rate increase because its costs rise. Since PB's rates have not reflected actual expenses since 1989, the Audit is wrong in its reiterated statements that ratepayers "funded" research, development and deployment of new services (RD&D) and that RD&D work was cross subsidized by ratepayers.

Under the NRF system, PB must share any earnings over a certain rate of return with our ratepayers. Thus, it is theoretically possible that RD&D or other expenditures could reduce PB earnings so that it could avoid sharing. However, as we pointed out in our Response, since NRF began, the gap between PB revenues and the sharing level has been far greater than total RD&D expenses. In short, while there is a theoretical way that a cross subsidy of RD&D expenses could have occurred, in fact ratepayers were <u>not</u> deprived of any sharing opportunity.

The CPUC has set up specific rules for handling RD&D expenses, and PB has always followed these rules (which changed twice during the course of the Audit). The Audit faults PB for its actions in connection with RD&D expenses, but fails to note that those actions were in compliance with the rules in effect at the time.

In short, the NARUC Audit did not find that PB "had engaged in extensive cross subsidization." The Audit only indicated that the auditors (ratepayer advocates at the California Public Utilities Commission) had concerns about <u>possible</u> cross subsidization. The statement that the CPUC's extensive safeguards might be "creating the perverse effect of encouraging cross subsidization" was never explained and is incomprehensible. Our Response showed that the auditors' concerns were invalid because:

(1) Under the CPUC's price cap regulatory system, PB's RD&D costs cannot increase telephone rates and have not decreased shareable earnings since 1990.

(2) PB has followed the CPUC's comprehensive rules about affiliate transactions and the tracking and reporting of RD&D costs. Several audits, both internal and external, have found no material failures to comply with the rules. When minor errors have occurred, they have been corrected promptly.

In particular, the four items cited by Cox (with only one citation to the Audit) are wrong.

(a) The time spent by PB experts has been correctly divided between competitive and non-competitive projects. While some errors occurred, they have been corrected.

(b) Many of PB's infrastructure modifications (such as fiber-based applications) were not "mainly" to accommodate competitive enhanced services, but instead benefited its telephone customers. Any such modifications that specifically benefited competitive services were separately tracked and reported, as required by CPUC rules. Without a citation to the Audit, we cannot respond more specifically.

(c) RD&D expenditures were properly tracked and reported, in accordance with CPUC rules in effect at the time (these rules changed twice during the course of the Audit). No improper "cost shifting" occurred.

(d) PTG's decisions concerning PCS are entirely consistent with the regulatory policies of the CPUC, including both the policy that the potential rewards of a new product should "follow the risk," i.e., be assigned to the part of the business that incurred the risks of developing the product, and the policy that telephone customers should not be exposed to the risks inherent in new highly-competitive businesses (like PCS).

PTG shareholders financed our PCS RD&D. Over $40 million was spent by Telesis Technologies Laboratory, a separate subsidiary financed entirely by shareholders. PB filed an Advice Letter with the CPUC on July 1, 1994, to refund a much smaller amount ($4.6 million) related to a Bellcore project on PCS and PB expenses associated with oversight of the project.

The Audit was presented to NARUC over a year ago, at its meeting in San Diego in July, 1994. Neither NARUC nor the CPUC has taken any action (for example, a rate disallowance, a fine or other penalty, or a follow-up investigation) against PB based on the Audit.

10. Developmental Costs Of PCS Have Been Paid For By The Shareholders Or Refunded To The Ratepayers.

Cox brings up the issue of correct accounting for past PCS investments. As explained in the previous section, the developmental costs of PCS were borne by the shareholders, except for a small portion of costs that were paid for by PB in support of developmental costs done by Bellcore. Those costs have already been refunded to the ratepayers. On July 1, 1994 we filed an Advice Letter with the CPUC in which we proposed a one time refund of $4.6 million.[78] In addition, PB proposed to lower rates on a prospective basis from September 1, 1994 forward, to account for the ongoing effect of this adjustment by $541.1K. This adjustment was proposed to ensure that expenses associated with retail PCS for that time period associated with work done by Bellcore were not paid for with ratepayer funds. The Bellcore project was radio and satellite systems research. The refund included expenses of a few PB employees who oversaw the project.

The CPUC adopted Resolution T-15627 (October 26, 1994) which approved the refunds:

1) subject to a true-up order of the CPUC as a result of auditing by the CPUC's Division of Ratepayer Advocates, and
2) conditional on Pacific's separately tracking all expenses related to wireless service to be offered through PBMS at this time.

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[78] Advice Letter of Pacific Bell, No. 17025, July 1, 1995.

11. Our Plan Protects Against Cross Subsidy.

Finally, on the issue of cost accounting safeguards for PCS, many of the comments really constitute much ado about nothing. A complete accounting system is in place as an alternative to structural separation to prevent cross subsidy. This system has been in place since the late 1980's and it works. Because PCS services are treated as nonregulated for accounting purposes, regulated landline services cannot subsidize PCS services. Moreover, PCS costs are in a separate subsidiary. AirTouch agrees that the current rules are sufficient. "It is only by requiring compliance with these rules [Part 32 and 64] that the Commission can achieve its goal of preventing 'discrimination and cross subsidization' as well as 'ensur[ing] that LECs do not behave in an anticompetitive manner."[79] Our Plan is in compliance with those rules and the rules are sufficient to protect against cross subsidy.[80]

C. Adherence To CEI And ONA Need Not Be Addressed In Our PCS Safeguards Plan.

Cox alleges that "PacTel has not demonstrated how it complies with either comparably efficient interconnection ("CEI") or open network architecture ("ONA") even though the Commission decided to make LEC compliance with CEI and ONA a necessary precondition to lifting structural separation."[81]

CEI requirements such as interface functionality, technical characteristics, and CEI availability are aimed at ensuring fair and non-discriminatory interconnection for enhanced service providers.[82] In the wireless arena, there already is a discrete and well-defined obligation to provide

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79 AirTouch, p. 3.

80 Computer III Remand Order, p. 13.

81 Cox Summary (ii).

82 In the Matter of Filing and Review of Open Network Architecture, CC Docket No. 88-2, Phase I, 4 FCC Rcd 1 (1988), para. 136, n.255.

fair and non-discriminatory interconnection.[83] There is no need to impose requirements with respect to enhanced services since wireless services already have their own interconnection requirements. ONA is concerned with the unbundling of networks elements that relate to the provision of enhanced services. Unbundling has not been required for wireless interconnection. Nothing in the record supports addressing this issue in consideration of our Plan. For the foregoing reasons, our plan did not need to address CEI and ONA.

D. We Will Comply With The CPNI Rules And The Network Disclosure Rules.

Sprint[84] and Cox[85] both raise the issue of competitive safeguards regarding Customer Proprietary Network Information ("CPNI") and network disclosure obligations.

1. CPNI.

CPNI is "all the information about a customer's network services and a customer's use of those services that a BOC possesses by virtue of its provision of network services."[86] We have defined CPNI as follows:

-- Telephone number and service location (if different from published)

-- Usage and billing data (e.g. number and length of calls)

-- Telephone numbers called

-- Billing name and address (if different from published information)

-- Type of service (e.g. call waiting)

-- Class of service (e.g. business)

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[83] The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 59 Rad. Reg. 2d 1275 (1986); Report No. CL-379, Declaratory Ruling 2 FCC Rcd 2910 (1987); Memorandum Opinion and Order on Reconsideration, 4 FCC Rcd 2369 (1989).

[84] Sprint, p. 14.

[85] Cox, p. 35.

[86] In the Matter of Filing and Review of Open Network Architecture Plans, CC Docket No. 88-2, Phase I, 4 FCC Rcd 1, (1988), para. 411.

-- Number of lines associated with the account.

Sprint's concerns about CPNI is related to its objection to our ability to do joint marketing. [87] Sprint specifically requests that the Commission prohibit the flow of customer information between PB, NB and PBMS. Joint marketing of enhanced services must follow CPNI requirements, and in the interest of allaying our competitor's concerns, we will apply these rules to the provision of PCS. This means the following:

- The annual notification to multi-line business customers will include PCS services.
- For customers with more than 20 lines, our personnel who market PCS services must obtain written authorization before gaining access to CPNI.
- If PBMS receives aggregate CPNI from PB or NB, we will provide the same information to other PCS providers on the same terms and conditions. We will provide notice annually to other PCS providers regarding the availability of aggregate CPNI.
- CPNI will be provided to unaffiliated PCS providers pursuant to a customer's instructions.

PB sales representatives that make referrals to PBMS will not have access to those accounts that have been classified as restricted pursuant to the customer's request.[88] At this point, we expect that PB sales representatives will only use CPNI to make referrals to PBMS. Some account executives may have more information to provide customers about PCS, but PB sales representatives or account executives will not close the sale of PCS services, under current plans.

Our compliance with the CPNI rules should address Sprint's concern about customer information. The CPNI rules have been in place for many years and the Commission has addressed issues related to CPNI many times. The CPNI rules are recognized by the Commission as allowing the BOCs to engage in integrated marketing and sales of regulated and nonregulated

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[87] Sprint, p. 12.

[88] As noted in our safeguards plan, marketing in Nevada may be done by Nevada Bell, by PBMS itself, or by some other arrangement with Nevada Bell. Whatever the arrangement, CPNI rules will be complied with.

services from a mass market perspective that benefits the public[89] while also giving third parties access to CPNI if the customer chooses.

The Commission has recognized that more stringent efforts to restrict the flow of information, such as a rule that would require prior authorization be provided by every customer, "would vitiate a BOC's ability to achieve efficiencies through integrated marketing to smaller customers -- one of the benefits sought through adoption of nonstructural safeguards rather than structural separation." [90] Sprint's comments on joint marketing and the flow of information between PB, NB and PBMS are simply another attack on our ability to offer PCS on an integrated basis. Our agreement to comply with the CPNI rules negates any reason for the Commission to independently examine the customer information issue.[91]

2. Network Disclosure.

PB and NB will follow network disclosure rules already in place regarding public notification and public disclosure of technical information. Although these rules currently apply only to changes in the network that affect the interconnection of enhanced services and CPE, PB and NB will voluntarily apply these rules to PCS to give our competitors adequate notice of any network changes.

There are two components to the network disclosure rules: <u>public information</u> at the "make or buy" point, and <u>public disclosure</u> of technical information about the service a minimum of six months prior to the introduction of the service.

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[89] Computer III Remand Order, para. 85.

[90] <u>Id.</u> at para. 85, n. 155.

[91] Sprint's joint venture partners include Cox, ComCast Corporation and Telecommunications, Inc. We expect that they will share customer information which they can do without restriction. Sprint's position on customer information is simply an effort to solidify a competitive benefit it has.

a. Public Information.

Whenever PB or NB makes a decision that will affect the interconnection of wireless services to the network, we will notify the PCS industry that a network change or new network service is under development. We will keep a list of PCS providers who are interested in receiving notice of such development. We will also publish the information in the Bellcore Catalog of Technical Information and the Bellcore Digest of Technical Information.

b. Public Disclosure.

We will make a public disclosure of relevant technical and market information at one of the following times:

Twelve months before the introduction of the new service, if notification of the buy point has occurred previously.

At the "decision to buy" point, if that point is between six and twelve months before introduction of a new service. In such instances, notification and disclosure shall be made at the same time.

At least six months prior to actual introduction of the service, if the buy point occurs less than six months prior to the planned introduction date of the service. In other words, we will always wait at least six months from disclosure before introducing new or modified services.

E. The Current Rules on Wireless Interconnection Are Well Established.

In our Plan PB and NB explained their commitment to offer fair and non-discriminatory interconnection to CMRS providers. Nevertheless, Cox, Sprint, and NexTel all take exception to various aspects of our commitment to fair and nondiscriminatory interconnection. The PB and NB interconnection policy is fully consistent with current federal policy. As discussed below, none of the commenters provide any reason for rejecting our plan on the basis of the interconnection policy.

1. The Tariffing Of Interconnection Arrangements After Good Faith Negotiations Complies With Federal Policy.

In the Plan, we explained that PB has a proposed tariff for interconnection pending with the California Public Utilities Commission[92] and that NB has an interconnection tariff in effect on file with the Public Services Commission of Nevada. Currently in California we provide for interconnection arrangements by contract.

Cox's comments on interconnection are replete with errors. On page 36, Cox states incorrectly that we have a tariff on file in California and one expected in Nevada. On page 37 Cox acknowledges that the California tariff is pending. Cox states that "PacTel's proffering of its intrastate interconnection tariff is an outright repudiation of the Commission's requisite standards for good-faith negotiation on the terms and conditions of interconnection."[93]

While PB now provides interconnection arrangements under contract, it is not improper to change to a tariff system provided good faith negotiations have taken place prior to the filing of the tariff.[94] The Commission recently acknowledged that interconnection arrangements "are sometimes offered solely through contracts, but are sometimes filed in state tariffs."[95] Thus, changing to a tariff system is entirely consistent with federal policy.

Cox goes on to allege that "PacTel's attempt to foist its intrastate wireless carrier tariff unilaterally upon all PCS licenses makes a mockery of the good faith negotiation

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[92] On September 2, 1994 the proposed tariff was withdrawn in its entirety and refiled on the Open Access Rulemaking, R. 93-04-003.

[93] Cox, p. 37.

[94] In the Matter of the Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Report No. CL-379, 4 FCC Rcd 2369, paras. 10-15 (1989).

[95] Interconnection NPRM, para. 108.

requirement."[96] Similarly, NexTel finds fault with the five types of interconnection referenced in our Plan, and claims that they may not be responsive to the needs of individual CMRS providers.[97]

The pending wireless tariff states the terms we negotiated with the wireless industry and includes the interconnection arrangements contained in our Plan. However, all possible interconnection arrangements are not limited to those descriptions. In addition to these arrangements designed in conformance with industry standards and Commission direction the wireless carriers may purchase any tariffed service offered by PB and NB. As PB and NB develop new feature and function capability, we will offer those to all wireless carriers. To the extent that PCS licensees have additional interconnection requirements, PB will negotiate with them. Likewise, NB will amend its tariff, if necessary. Neither Cox nor NexTel offer any detail on what different type of interconnection requirements they would have that would not be met by the types we reference in the Plan.

2. Our Interconnection Offerings Meet Federal Requirements.

The Commission has specified the three types of interconnection that LECs are required to provide to CMRS providers.

> Type 1 service involves interconnection to a telephone company end office similar to that provided by a local exchange carrier to a private branch exchange. (PBX). Type 1 interconnection involves an end office connection that combines features of line-side and trunk-side connections and uses trunk-side signaling protocol. Type 1 interconnections enable the CMRS provider to access any working telephone number, including NXX codes within the LATA of the LEC providing the interconnection. The Type 1 connection also permits access to Directory Assistance, N11 codes, and service access codes. Type 2A connections give the CMRS carrier the ability to connect to the Public Switched Network in the same manner as any wireline carrier. The connections, which may be solely to access tandems or to a combination of tandems and other central offices, are true trunk-side connections using trunk-side signaling protocols. Type 2A connections do not permit access to LEC operator services or N11 codes. Type 2B connections are trunk-side connections to an end office that operate in the same

96 Cox, p. 39.

97 NexTel, p. 6.

> manner as high-usage trunks. Under Type 2B interconnection, the CMRS provider's primary traffic route is the Type 2B connection, with any overflow traffic routing through a Type 2A connection. Type 2B interconnection permits access to valid NXX codes, but cannot access operator services or N11 codes.[98]

PB and NB offer these types of interconnection as explained in our Plan.

Cox also criticizes our Plan for failing to disclose information to "ensure that the terms and conditions of its access and interconnection arrangements with non-affiliated PCS providers do not and will not unreasonably discriminate in favor of its PCS affiliate."[99] This is a contradictory position to take. Cox faults us for wanting to tariff interconnection arrangements which fully advise the public of the non-discriminatory rates and terms of interconnection and then faults us for not disclosing information. In the interest of assuring the commenters that PBMS is not getting any different arrangement on interconnection than any other PCS provider, PBMS will make its contract with PB available to a third party upon request under a non-disclosure agreement. The terms and rates in the contract are available to all.

3. The Obligation To Provide Expanded Interconnection Does Not Extend To Nondiscriminatory Interconnection For Wireless Services.

Cox,[100] Sprint[101] and NexTel[102] all seek to have the same ability to physically locate equipment on PB property as PBMS. They argue, that under the Commission's rules on Expanded Interconnection, that all interconnectors are entitled to the same type, nature and scope of interconnection as similarly situated interconnectors, and all interconnectors should have the same access as PBMS. The commenters misconstrue the Commission's goal in the Expanded

98 Interconnection NPRM, para. 105.

99 Cox, p. 39

100 Cox, p. 49.

101 Sprint, p. 8.

102 NexTel, p. 7.

Interconnection proceeding which was to promote competition in interstate switched and special access services. To support that purpose, the Commission ordered that all customers be provided virtual collocation of transmission facilities and equipment used to interconnect directly with the LECs switched or special access services.[103] It specifically found that collocation of switches is not necessary for expanded interconnection.[104] To the extent that any customers, including PCS providers, desire to place transmission facilities and equipment to interconnect with switched or special access, they may order expanded interconnection service from PB's tariff. The Expanded Interconnection proceeding does not support the position of the commenters with regard to non-discriminatory access to wireless interconnection.

The ability of PBMS to place equipment other then transmission facilities and equipment for switched or special access interconnection is an essential element of integration and involves the use of space (property). For example, PB's affiliate Pacific Bell Information Services is able to place voice mail equipment on PB property because enhanced services are permitted to be offered on an integrated basis. Likewise, in allowing PCS to be offered of an integrated basis, the Commission implicitly permitted us to locate PCS equipment on PB property. It did not order that physical collocation be made available to other PCS providers.

a. The Physical Collocation Of PBMS Equipment On PB Property Does Not Provide An Unfair Benefit With Regard To Interconnection Rates, Terms Or Conditions.

There is no basis for the Commission to order the physical collocation of PCS equipment on LEC property.[105] Real estate is readily available in the marketplace. We expect that Cox will collocate its PCS equipment with its monopoly cable facilities. In fact, under the terms of the grant of its Pioneer Preference (which was based on use of the cable plant), it is required to do

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[103] In the Matter of Expanded Interconnection with local Telephone Company Facilities, CC Docket No. 91-141, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7639 (1992); Second Report and Order and Third Notice of Proposed Rulemaking, 8 FCC Rcd 7374 (1993); Third Report and Order, 9 FCC Rcd 2718 (1994).

[104] Id., Second Report and Order and Third Notice of Proposed Rulemaking, para. 63.

[105] In addition, the provision of real estate is not a common carrier service.

so.[106] Likewise, we expect Sprint will collocate equipment. As Professor Hausman explained in a filing in Gen. Docket No. 90-314 in 1993, "The essence of competition is that each firm attempts to use its advantages to offer a better product or service at a lower price to consumers."[107] PBMS has a benefit, but it is not an unfair benefit. It is the same benefit of integration that Cox and Sprint have -- access to real estate that was acquired to support another complementary telecommunications venture.

Moreover, as we explained in our safeguards plan, there is no pricing advantage to the collocation of equipment because there is no distance sensitivity in the rates for interconnection between the switch of the CMRS provider and its serving wire center.

PB currently offers three serving arrangements for wireless interconnection: Type 1 (Interconnection to an End office), Type 2A (Interconnection to a Tandem) and Type 2B (One-Way Interconnection to an End Office). Various interconnection service elements and special access connections are also available.

Each serving arrangement consists of a trunk or line side connection between the wireless carrier's mobile switching office and PB's switching office where the wireless carriers NXX code resides. Charges for these connections are non-distance sensitive when the dedicated NXX code resides in the wireless carrier's serving wire center. Interoffice mileage may apply if the wireless carrier orders interconnection service from a PB switching office that is not in the wireless carrier's serving wire center. This is true for any wireless carrier, including PBMS. Each serving arrangement also has associated usage charges for calls completed over the serving arrangement. For Type 2A and 2B, these usage charges are non-distance sensitive. For Type 1, some calls will be billed at exchange rates or toll rates which may be distance sensitive. These changes are not dependent on where wireless facilities are located. They are dependent on the distance between the rate center serving the originating point of the call and the rate center of the

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[106] In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Service, GEN Docket No. 90-314, Third Report and Order, 9 FCC Rcd 1337 (1994) paras. 8 and 37-50.

[107] Affidavit of Jerry A. Hausman, Gen. Docket No. 90-314, November 4, 1992, p. 11.

terminating point of the call. Thus, they apply equally to all wireless carriers, regardless of the location of the wireless carrier's equipment.

Adjunct services (e.g. call forwarding, speed calling, call waiting) and ancillary services (e.g. 411, 611, operator services) will be billed at the appropriate tariffed rate. In addition, special access services, billed at the applicable tariffed rate, are available for the wireless carrier's use.

Sprint claims there will be an inherent non-pricing benefit if there is physical collocation of facilities and maintenance crews.[108] The only non-pricing benefit is the access to real estate which, as explained above, is not an unfair benefit and is not unlike Sprint's own benefits from its joint venture. Furthermore, as we explained in the Plan, PB maintenance and repair services will be provided on a non-discriminatory basis. All repair calls will be handled through the Access Carrier Service Center. Repair of PBMS equipment will be handled by PBMS employees, not PB employees.

In sum, physical collocation of equipment is an economy of scope that the Commission supported in its decision to allow integration. PBMS will compensate PB for the use of its property as required by the affiliate transaction rules.

4. Local Transport Competition Is Irrelevant To The Offering Of A Discount Plan For Wireless Interconnection.

Cox makes the odd request that Pacific Bell "demonstrate, by means of a certified interconnection agreement with a non-affiliated PCS provider, that it faces demonstrable competition from a facilities-based competitor prior to its implementation of downward pricing flexibility mechanism (such as the term discount proposed in the Plan)."[109] This relates back to Cox's comment in footnote 113 that "Absent facing sufficient competition from alternative access

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[108] Sprint, p. 8.

[109] Cox, p. 50.

providers, there is no guarantee that PacTel will not engage in anticompetitive practices rather than strategic pricing of volume and term discounts."

As we explained in our Plan, our rates do not contain any discounts related to size. This is because PB[110] wanted to ensure that large wireless carriers did not receive a pricing advantage unavailable to small carriers. Consequently, Pacific Bell's discount rates are based on the term of the contract and the individual carrier's projected minutes of use growth rather than total volume. All wireless carriers that commit to the same term and growth are eligible to receive the same discount. We do not understand why Cox finds fault with this. Certainly, there is no basis for its recommendation that Pacific Bell must sign an interconnection agreement with a non-affiliated PCS provider before we can offer the discount plan which we have been offering to cellular carriers for many years.

5. Our Costs For Interconnection Are Reasonable.

Cox is concerned about whether interconnection rates are cost-based and reasonable. "There is nothing in PacTel's Plan to prevent PacTel from loading every conceivable fully distributed cost or company overhead on its PCS competitors for items such as interconnection...."[111] It requests the Commission to require that PacTel "provide meaningful cost to justify any interconnection arrangements it offers to its PCS affiliates."[112]

When PB negotiates with the wireless industry, it provides cost data for its interconnection rates to the interconnectors under a non-disclosure agreement. Appropriateness of the rates is thoroughly discussed at that time. The Commission is currently considering in CC Docket No. 94-54 whether to require the filing of carrier-to-carrier interconnection agreements. We will comply with any decision reached in that proceeding. Finally, as we stated previously, the contract between PB and PBMS contains no types of interconnection or rates unique to PBMS.

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110 Nevada Bell does not have discount rates for interconnection.

111 Cox, p. 17.

112 Cox, p. 50.

6. The Absence Of Mutual Compensation In PB And NB's Interconnection Arrangements Provides No Basis For Rejecting Our Plan.

Cox suggests that the absence of mutual compensation from our Plan provides the Commission "ample discretion to reject the plan on that basis alone."[113] Cox also argues that "mutual compensation for LEC-PCS is primarily an interstate issue thereby requiring preemption of state mutual compensation mechanisms."[114] Cox is incorrect.

In the cellular interconnection proceeding, the Commission explained mutual compensation in the following terms:

1. Mutual compensation relates to the cost of interstate switching.[115] It does not relate to intrastate traffic.
2. Mutual compensation allows the landline or cellular carrier to recover "its actual cost of switching traffic for the other carrier."[116] In other words, each must independently establish its cost related to interstate switching.

These principles are clearly stated. They were extended but not expanded upon with respect to CMRS.[117]

As we explained in our comments on mutual compensation in CC Docket No. 94-54, the application of mutual compensation in the interstate arena based on those principles is unclear.[118] The interstate costs of interstate switching are already addressed by federal access charges. Interstate calls originated by a mobile customer are handled one of two ways. Either the call goes directly to the interexchange carrier, or it comes to a local exchange carrier that switches it to an interexchange carrier. In the first case, the local exchange carrier has no costs and receives

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[113] Cox, p. 42.

[114] Cox, p. 46.

[115] In the Matter of the Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Memorandum Opinion and Order on Reconsideration, 4 FCC Rcd 2369, para. 25 (1989).

[116] Id. at para. 20.

[117] Second CMRS Report and Order, 9 FCC Rcd 1411, 1498 citing Interconnection Order, 2 FCC Rcd at 2915.

[118] Reply Comments of PB, NB and PBMS, CC Docket No. 94-54, October 13, 1994, pp. 7-11.

no compensation. In the second case, LEC switching costs are compensated by the IEC and we do not charge the mobile carrier for usage. If we are receiving an interstate call and handing it off to a mobile customer, we are again being compensated by the IEC through interstate access charges, and there is no usage charge assessed on the mobile carrier. Since we do not charge mobile carriers, compensation to them on interstate calls is inappropriate.

In CC Docket No. 94-54, we requested that the Commission clarify why it believes switching costs require mutual compensation, since the access charge structure already compensates for the costs associated with switching a call to and from the IEC. We also asked the Commission to address mutual compensation in a separate proceeding, because the record in CC Docket No. 94-54 was confusing and incomplete. When the Commission resolves the existing confusion regarding mutual compensation in the federal arena, PB and NB will begin good-faith negotiations about the specific terms of mutual compensation ordered by the Commission.

With respect to intrastate calls, we have discussed mutual compensation with the wireless industry. Our discussions did not progress beyond the preliminary stage because the wireless industry declined to pursue the issue when we asked for their cost support. The CPUC is currently examining the issue of mutual compensation with respect to competition in the local exchange market.[119] If any decisions in that proceeding include wireless interconnection, we will apply mutual compensation to intrastate calls as directed by the CPUC.

7. Our Plan Meets The Federal Guidelines On Wireless Interconnection.

The Commission's policy on interconnection for PCS and all other CMRS providers is an extension of its policy on cellular providers. PB and NB have provided interconnection to cellular providers for almost a decade. In that time we have been committed to reasonable and non-discriminatory charges for interconnection. As we explained in our Plan, we will continue that commitment with respect to PCS providers. If any PCS provider requests

[119] Order Instituting Investigation on the Commission's Own Motion into Competition in Local Exchange Service, Rulemaking No. 95-04-043, 1995 Cal. PUC Lexis 222.

facilities where we have none, we will offer the facilities under a special construction arrangement that will be priced according to the costs of providing the facilities. PB's interconnection contract has a section on special construction. The terms and conditions are the same for all wireless interconnectors. Wireless interconnection is a market that we have been serving and we are anxious to expand that service to PCS providers. Our commitment to them is the same as our existing commitment to the cellular providers.

1. We will offer interconnection at reasonable charges and on a non-discriminatory basis.
2. Interconnection will be through standard network interfaces. Thus, the quality of interconnection will be equal for interconnectors. We currently offer the types of interconnection required by the Commission.
3. We will offer the type of interconnection chosen by the carrier if it is technically feasible and economically reasonable.
4. Interconnection will be provided in a reasonable time. Repair and maintenance will be handled on a non-discriminatory basis.

The commenters provide no specific evidence of discriminatory interconnection. Their comments are based on sheer speculation and provide no basis for rejecting our Safeguards Plan. Contrary to the comments, the interconnection obligation is well-established and our Plan complies with those obligations. To the extent that an order in CC Docket No. 94-54 changes those obligations we will comply with any changes. There is no reason to delay approval of our Plan based on uncertainty regarding interconnection obligations.

V. PB, PBMS, AND PTMS ARE NOT TAKING CONTRADICTORY POSITIONS BEFORE THE STATE AND FEDERAL REGULATORS.

Cox alleges that we are "gaming" the regulatory process by taking contradictory positions before the FCC and CPUC.[120] To support this position, Cox says that we claim the FCC "lacks jurisdiction over financial arrangements between LECs and PCS providers regarding

[120] Cox, p. 43.

compensation for termination of either intrastate or interstate traffic."[121] That is a blatant misstatement of the record which Cox cites in footnote 103. Nowhere in those quoted statements is there any evidence that PBMS or PB has argued that the Commission lacks jurisdiction over compensation for the termination of interstate traffic. We have never taken that position. However, as explained above, we have stated that it is unclear how mutual compensation for interstate traffic should be implemented, since wireless carriers do not compensate us on interstate calls.

Cox then points to a recent state filing we made relating to the financing transactions to acquire and construct the PCS network.[122] Those transactions are still being considered. In the filing we sought agreement from the CPUC that its review of such financing arrangements for the building of the network would constitute a form of entry regulation that is preempted by Section 332 of the 1993 Omnibus Budget and Reconciliation Act.[123]

These two issues are unrelated, and our positions on them are not contradictory. In one instance, we are saying that the CPUC should retain jurisdiction over intrastate interconnection rates. In the other instance, we are saying that state approval of financing arrangements for the building of a PCS network is a preempted form of entry regulation. Both positions are fully consistent with current federal policy.

VI. PTMS WILL RETAIN CONTROL OF THE LICENSE.

MCI raises the issue of whether PTMS will exercise control and supervision over the PCS license.[124] This issue is not relevant to the issues of cross subsidy and non-discrimination

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[121] Cox, p. 44 (emphasis in original).

[122] Cox, pp. 44-45.

[123] Notice of Motion and Motion of Pacific Bell Mobile Services and Pacific Telesis Mobile Services for an Order That Any Commission Approvals of Financing Transactions for Its PCS Networks Are Preempted by the Federal Communications Act, July 19, 1994.

[124] MCI, p. 2.

that form the requirements in the Plan. We have always disclosed that PTMS would be the licensee, and that PBMS would design, construct, manage, operate and market services for PTMS. This was noted on our original license applications. PTMS will retain control of the license. If the Commission finds this issue to be relevant to review of our safeguards plan, we will be happy to provide whatever information it deems necessary.

MCI also alleges that the Plan fails to describe the safeguards that will govern transactions between PTMS and its affiliates.[125] As we explained in our Plan, for federal accounting purposes we are treating PCS as a nonregulated service. Thus, all interactions that PB and NB have with PTMS and PBMS are affiliate transactions governed by Part 32.27 of the Commission's rules and the CAM.

VII. CONCLUSION.

The comments filed by our competitors are based on erroneous conclusions regarding both the finality and the sufficiency of the rules that form the basis for our Safeguards Plan. As we explained above, the rules are final, and they are sufficient. There is no need for the Commission to engage in further rulemaking prior to the approval of our Plan.

The Commission concluded that the public would benefit from LEC provision of PCS. It further concluded that the integrated provision of PCS and landline services was in the public interest. It required approval of a safeguards plan that addressed the issue of cross subsidy and non-discrimination. Our Plan addresses those issues consistent with the Commission's policy.

[125] MCI, pp. 2-3.